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**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND SARA MILLER**

The State Board of Embalmers and Funeral Directors (the "Board") and Sara Miller ("Licensee" or "Miller") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Sara Miller" (the "Settlement Agreement") to resolve the question of whether Miller's funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on her licenses.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against her licenses. Being aware of these rights provided to her by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her.

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that she has been advised her right to seek legal counsel, at her expense, to assist her with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 333.330.2 authorizes discipline against funeral director and embalmer licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

Joint Stipulation of Facts and Conclusions of Law

The parties agree and stipulate to the following findings of fact and conclusions of law:

2. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

3. Sara Miller is an individual who has registered her address with the Board as 27 Kassebaum Lane, Unit 200, Saint Louis, Missouri 63129.

4. Miller holds funeral director license number 2008019638 that was and is current and active at all times relevant to this matter.

5. Miller holds embalmer license number 200802228 that was and is current and active at all times relevant to this matter.

Conduct Giving Cause for Discipline

6. Miller submitted her "Application to Renew Funeral Director June 1, 2012-May 31, 2014" to the Board that she indicated that she signed on May 1, 2012 (the "2012 Funeral Director Renewal").

7. Miller submitted her "Application to Renew Embalmers June 1, 2012 to May 31, 2014" to the Board that she indicated that she signed on May 1, 2012 (the "2012 Embalmer Renewal").

8. Miller answered "yes" to questions 5 and 6 on the 2012 Funeral Director Renewal and on the 2012 Embalmer Renewal that both asked the following:

5. Since your last renewal have you ever been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal; law, ordinance or rule, whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully in a statement and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).

6. Since your last renewal, have you ever been arrested, charged with of any violation of any federal, state or municipal law, ordinance or rule whether or not

sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully in a statement and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).

9. Miller attached her statement explaining the answers on her 2012 Funeral Director Renewal and her 2012 Embalmer Renewal (the "Statement").

10. In the Statement, Miller reported:

February of 2011 I was charged with DWI, first offence. The final outcome of the courts is Suspended Imposition of Sentence as shown on the attached documentation.

11. Miller also attached the request documents.

12. The Circuit Court of St. Louis County, Missouri, Municipal Division – City of Town & Country finally adjudicated Miller finding her guilty of the charges of "DWI, Weaving" and, by Probation Order, dated 6-2-11, the Court suspended the imposition of sentence on charges of DWI and Weaving and placed Miller on Bench probation for a period of 24 months, subject to specified conditions of probation set forth in the order. *City of Town & Country, Missouri v. Sara Beth Miller*, Case number 908 42708,09.

13. On August 2, 2011, the Circuit Court of St. Louis County, State of Missouri affirmed the order of the Missouri Director of Revenue revoking the driving privileges of Miller. *Sara Beth Miller v. DOR*, Case number 11SL-AC11451.

Causes for Discipline

14. A funeral director operates a motor vehicle as part of his job duties to provide transportation for decedents and their families. The excessive use of alcohol impairs this ability.

15. The ability to perform the work of embalming a dead human body requires skills impaired by the excessive use of alcohol.

16. The excessive use of alcohol impairs a licensee's ability to perform the work of a funeral director and an embalmer.

17. There is cause to discipline the funeral director and embalmer licenses held by Miller pursuant to Section 333.330.2(1) RSMo.

Jurisdiction and Venue

18. Jurisdiction and venue are proper.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

19. Licensee's licenses to practice as a funeral director and embalmer are hereby placed on **PROBATION** for a period of **TWO YEARS** from the effective date of this Settlement Agreement. During the Disciplinary Period, Miller shall be entitled to practice as a funeral director and embalmer, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions of probation:

Terms and Conditions of Probation

20. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

General Requirements

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee

utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;

- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- f. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- g. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;

- h. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;
- i. Licensee shall not operate a motor vehicle in the conduct of any business of funeral directing unless Licensee holds proper licensure to operate a motor vehicle;
- j. Licensee shall comply with all terms and conditions of probation imposed in *City of Town & Country, Missouri v. Sara Beth Miller*, as determined by the Court. If the Court finds that Licensee has violated the terms and conditions of her criminal probation, such a finding of violation shall be deemed to be a violation of the probation imposed on Miller's licenses by this Settlement Agreement. Miller shall report the finding of any such probation violation to the Board within 10 days of the Court's ruling.

21. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

22. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license(s).

23. The Board shall enter no order imposing further discipline on Licensee's license(s) without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

24. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

25. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

26. Licensee, together with her heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of,

or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

27. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

28. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

29. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

30. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee



Sara Miller

Dated: 12/18/2012

Board




Sandy Sebastian

Executive Director

State Board of Embalmers and Funeral Directors

Dated: 12.28.12

Approved:



Sharon K. Euler # 42950

Division of Professional Registration

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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
1.12.13
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS